March 29, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Bell Fuels, Inc.

Date of Filing: January 3, 2006

Case No.: TEE-0029

On January 3, 2006, Bell Fuels, Inc. filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, the firm requests that it be relieved of the requirement to file Form EIA-782B, entitled “Resellers/Retailers’ Monthly Petroleum Product Sales Report,” and Form EIA-821, entitled “Annual Fuel Oil and Kerosene Report.” As explained below, we have determined the Bell Fuels request should be denied.

I. Background

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B and EIA-821 reporting requirements grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.[2]

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA permits reporting firms to rely on reasonable estimates.[3]

Form EIA-821 is a yearly report, pursuant to which fuel oil distributors report sales volumes of fuel oil and kerosene. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Again, in order to minimize the reporting burden, the EIA permits the reporting firms to rely on reasonable estimates.[4]

EIA designates some companies as “certainty” firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states. All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers the data more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.”[5] Since all reporting firms are

[2] See H.R. Rep. NO. 373, 96th Cong., lst Sess., *reprinted in* 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).
[3] Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.
[4] *See* Section 7 of the General Instructions to Form EIA-782B.
[5] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).

burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;[6] the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;[7] extreme or unusual circumstances disrupt a firm's activities;[8] a combination of factors render the reporting requirement an undue burden.[9]

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.[10] Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.[11]

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[6] ***Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).**

[7] ***S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).**

[8] ***Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).**

[9] ***Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).**

[10] ***Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).**

[11] ***Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).**

III. The Bell Fuels Application for Exception

Bell Fuels is a publicly-owned seller of petroleum products headquartered in Chicago, Illinois. Bell Fuels has filed Form EIA-782B each month since 1993.[12] The firm has filed Form EIA-821 on an annual basis since 1986.[13] According to Bell Fuels, these reporting requirements together present an undue burden.[14] Bell Fuels stated it has recently relocated and lost employees.[15] Bell Fuels stated it is a small entity, and there is only one person available to prepare and file both reports.[16]

Based upon a review of the Bell Fuels application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Bell Fuels to give the firm an opportunity to discuss the request. The firm stated that the credit manager and tax manager have recently left the firm.[17] Bell Fuels also stated that completing the forms is time-consuming and that the firm has completed the forms for a number of years.[18]

We also contacted representatives from the Energy Information Administration (EIA) and obtained the following information. Bell Fuels is a "certainty firm" -- a firm that (i) sells 5 percent or more of a particular product sales category in a state in which it does business or (ii) does business in four or more states.[19] Certainty firms are of great importance to the accuracy of the data samples because of the size and extent of their operations.[20] Accordingly, in order for a certainty firm to receive an exception, the firm must make a compelling showing that the filing requirement imposes a "serious hardship, inequity, or unfair distribution of burdens."

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[12] Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.
[13] Conversation between Ronald D. Hester, OHA and Daniel Walzer, EIA on January 13, 2006.
[14] Bell Fuels, Inc. Application for Exception, submitted to OHA on January 3, 2006.
[15] *Id.*
[16] *Id.*
[17] Conversation between Ronald D. Hester, OHA and Eugene L. Andres, Bell Fuels, Inc. on February 6, 2006.
[18] *Id.*
[19] Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.
[20] *Id.*

IV. Analysis

Bell Fuels has not demonstrated that the reporting requirements -- together or separately -- pose a "special hardship, inequity, or unfair distribution of burdens." The forms require little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out Form EIA-782B and 3.2 hours to fill out Form EIA-821.[21] The burden of these requirements can be substantially reduced by the use of estimates.[22] In any case, the fact that Bell Fuels might require a little more time on average does not justify relief.

Bell Fuels' principal argument -- that the firm has filed the forms for a number of years and has downsized - does not provide the basis for an exception.[23] As indicated above, all certainty firms are included in the survey sample on a continuing basis because of their impact on the market. The continuity of the survey cannot be maintained by replacing a certainty firm with a similar firm since all companies of this kind already participate. Accordingly, the fact that a firm has filed for a number of years and has limited staff does not indicate that the reporting requirements adversely affect the firm in a manner that is disproportionate to their impact on other reporting firms.[24]

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Application for Exception filed by Bell Fuels, Inc., Case No. TEE-0029, be, and hereby is, denied.

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[21] ***See*** **Section 10 of General Instructions to Form EIA- 782B & Section 7 of General Instructions to Form EIA-821.**
[22] ***See*** **Section 7 of the General Instructions to Form EIA-782B.**
[23] ***See Mulgrew Oil Co.*****, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable);** ***see also Taylor Oil Co.*****, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).**
[24] ***See Patriot Petroleum Inc.,*** **26 DOE ¶ 81,018 (1997);** ***Sound Oil Co.*****, Case No. LEE-0152 (1994).**

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: March 29, 2006